UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 22-19361-MBK
	.	
BLOCKFI INC., et al.,	.	
	.	402 East State Street
	.	Trenton, NJ 08608
Debtors.	.	
	.	September 4, 2024
. . . . .		10:02 A.M.

TRANSCRIPT OF DEBTORS' PROPOSED KYC/AML PROTOCOLS AND THE OBJECTION AND THE CROSS MOTION FILED ON BEHALF OF MATTHEW GORDON, AND OBJECTIONS TO THE DEBTORS' PROPOSED CLAIMS RESERVE

BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Plan Administrator:	Brown Rudnick, LLP By: KENNETH AULET, ESQ. MATTHEW SAWYER, ESQ. 7 Times Square New York, NY 10036 Genova Burns LLC By: DONALD W. CLARKE, ESQ. 110 Allen Road, Suite 304 Basking Ridge, NJ 07920
Audio Operator:	Kiya Martin

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J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (Cont'd):

For Matthew Gordon:	Dorf Nelson & Zauderer LLP By: AARON WEISSBERG, ESQ. 555 Theodore Fremd Avenue Rye, NY 10580
For George Gerro:	Gerro & Gerro By: GEORGE GERRO, ESQ. 530 S. Glenoaks Blvd., Suite 200 Burbank, CA 91502
For John W. Van Tubergen, Jr.:	Connell Foley LLP By: JOAO F. MAGALHAES, ESQ. One Newark Center 1085 Raymond Boulevard, 19th Fl. Newark, NJ 07102

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THE COURT: Okay. Good morning, everyone. This is Judge Kaplan, and let everybody adjust their videos. We'll start my calendar this morning with respect to the BlockFi Inc. matters. Okay. Thank you.

As is the norm, to the extent I haven't called upon you and you wish to be heard, please use the raise hand function, otherwise I'll be sure -- I'll do my best to try to make sure everybody gets heard. All right.

Let me turn to debtors' counsel. I believe we have just essentially a couple of matters on for today. We have the debtors' proposed KYC/AML protocols and the objection and the cross motion filed on behalf of Matthew Gordon, and then we have motions and cross motions regarding -- I'm sorry, the objections to the debtors' proposed claims reserve. Mr. Aulet, am I correct?

MR. AULET: Good morning, Your Honor. Kenneth Aulet of Brown Rudnick for the record. You are correct, Your Honor. There is only the KYC/AML motion as we refer to it, and the cross motion related to that, and the notice of disputed claims reserve and the two objections to those.

THE COURT: Do you have a preference?

MR. AULET: So, Your Honor, given the status of the case, we'd propose to make sort of a short opening statement on where the case is and the impending final customer distribution, then move to the objections to the disputed

claims reserve, and then handle the KYC/AML motion last.

THE COURT: All right. You may begin. Thank you.

MR. AULET: Thank you, Your Honor. Your Honor, where we are today was unimaginable when BlockFi filed for bankruptcy, and it was even unimaginable when the plan was confirmed.

BlockFi in the lead up to its filing had lent hundreds of millions of dollars, close to a billion dollars worth of crypto currency to Alameda or placed it on its platform, on the FTX platform, and in the wake of FTX's bankruptcy filing that was a big hole to fill.

Shortly before the bankruptcy BlockFi in preparation for these cases liquidated a large -- the vast majority of its U.S. based cryptocurrency in the days and weeks before the filing. So, it entered Chapter 11 with its business, which was frozen, its bank accounts and liquidation of claims against FTX and others. It's not a good place to be.

And BlockFi was essentially a financial company, and Congress has recognized that Chapter 11 is very difficult for financial companies. Most are now ineligible for Chapter 11 because for a financial company the time to sell if you're going bankrupt it's the day before the bankruptcy.

You know, a broker-dealer or bank, a commodities futures merchant, all have a regulator that will keep an eye on companies and when they get into trouble. Broker of sale

before the Chapter 11 -- before the filing happens because once a financial company hits bankruptcy it's very, very difficult to save it. Everybody did the best that they could, but ultimately BlockFi's business could not be sold or saved.

So, BlockFi didn't have the ability to hope for a recovery in crypto prices that would bring people back to par on a dollarized basis because it just didn't have enough left, and even a recovery from FTX was doubtful.

BlockFi did an excellent job in getting repayment and collateral pledges from FTX before its bankruptcy, but, as Your Honor knows, those are not great facts to be defending when FTX has gone bankrupt and is asserting avoidance claims against BlockFi. There could have been a situation where although FTX owed BlockFi money, BlockFi wound up paying FTX more than it got.

And even when this plan was confirmed, you know, where we are today was (indiscernible). We had what we believed were strong claims against FTX and strong defenses against FTX's claims, but litigation against an enormous estate like FTX was not going to be cheap. It was not going to be quick. We faced the prospect of years of litigation to get a recovery from FTX. Instead, within a year of the plan administrator being appointed, we're prepared to commence a 100 percent final customer distribution.

You know, this is the result of just a huge amount of

effort by a huge amount of people, and I hesitate to identify them because I'm just going to leave people out, but, you know, there's our planned administrator Mo Meghji, his team at M3 Partners that's led by Matt Manning, who have just worked tirelessly from their appointment to get here today.

We have a Creditor Oversight Board, three members, Brendan, Elizabeth and Greg, who are creditors in this case. They have had to walk -- you know, it's their life savings at issue. They have had to watch as their money is spent on this process. They've had to make the hard decisions knowing just how important the results are for them and for everybody like them.

There's the joint liquidators of BlockFi International. You know, it's a credit to the joint liquidators just how little we've had to discuss that there are parallel proceedings in Bermuda. Bermuda doesn't have a Chapter 15 equivalent. These are two sort of main proceedings, and there could have been huge issues between, you know, the U.S. proceeding and the international proceeding, and instead there's been nothing, and that's a testament to the joint liquidators, who have also worked tirelessly from their appointment as joint provisional liquidators, their conversion to joint liquidators and as a member of the Oversight Board as well.

There's our co-counsel Haynes and Boone led by Rich

Kanowitz's team and our co-counsel Genova Burns led by Dan Stolz. They've been there every step of the way. These results could not have been achieved without their efforts.

There's the BlockFi team. Again, could not be here without the BlockFi team's work. They've worked tirelessly, even though they are essentially working to put themselves out of a job. We get e-mails from them late at night. They work hard to respond to every customer inquiry they get, and -- but the distributions that we anticipate going out could not have got -- be ready to go out on this timeline without their work. It's a real credit to them.

There's Judge Goldblatt and Judge Drain who negotiated the settlements that got us to this point, resolving what should, could and really should have been incredibly expensive, incredibly lengthy, incredibly difficult litigation with the FTX and Three Arrows Capital estates.

And last, but not least, you know, this Court and Your Honor who have made sure that we understood exactly what was at stake, that everybody was directed at getting the best result for BlockFi customers as quickly as possible. Your Honor has never lost sight that these are real people with real -- with their life savings, and we just don't have the ability to delay getting them their money back.

You know, we would never have been happy with any distributions under a hundred percent to customers, though it

looked like we were going to be at points of this case just trying to get the best failure we could. We're really happy to be here with a hundred distribution, but we're even happier to be here so quickly because, again, this should have and could have taken years, and these are people's life savings. It really, really matters getting them back to people today rather than next year, the year after, the year after.

And I want to recognize BlockFi's customers are going to feel that we're grading on a bit of a curve here. They have suffered tremendously. They've been separated from their money for quite some time, and they've lost out on investment returns in crypto currency, lost out on interest on dollars, and they're not going to be getting either of those back, and I think that we should keep in mind that we have not been able to bring -- make those people completely whole.

There was in the FTX proceeding Sam Bankman-Fried attempting to justify his actions by saying essentially no harm, no foul to the Court because FTX's customers will get 100 percent of the dollar value of their claims or more, but that's not the same as what they lost. That's not the same as what BlockFi customers lost.

But I still think it's important to recognize this truly exceptional result. It's a truly exceptional result that has been achieved without all the tools that Congress has given, you know, the liquidators of a bank or a broker-dealer

or a futures commission merchant.

So, we're really happy to be here today, and I know that our customers are very eager to get some of the details of those distributions, a timeline, so I wanted to give that, as well.

We have extended the deadline to get a matching Coinbase account to tomorrow the 5th. Anyone who -- we'll run a test after that, anyone who has a matching Coinbase account at that point will receive in kind distributions. The plan didn't contemplate in kind distributions after six months because it was understood the BlockFi platform could not be kept alive indefinitely, but by virtue of this agreement with Coinbase we have been able to extend that ability to make this final distribution in kind to people who have a Coinbase account.

For those who don't we will make the distribution in cash through Digital Disbursements, our distributions partner. Those will be -- those distributions for U.S. based customers will commence the week of September 16th. That may be both in kind and cash distributions. It may be one or the other. The delay between the 5th and 16th is getting the population of Coinbase customers set, obtaining the necessary assets to make the distribution, and about two weeks to do that, rebalancing and to create the distribution files.

I just want reiterate because I've seen some

confusion on Reddit on this point, people who do not have a Coinbase account will get their distributions, and they will get them around the same time. It may not be the exact same date, but it's not going to be a difference of months. It's going to be a difference of likely days. They will get their distribution. They will not lose their entitlement to a distribution because they could not get a Coinbase account.

For international distribution the -- we have been working to resolve regulatory issues around Bermuda laws regulating BlockFi International. We believe that we have gotten to a result on that. We are going to be commencing a refresh of all remaining international accounts for Know Your Customer, KYC information. We expect that the e-mails for that will go out by the end of the month. We're targeting sooner than that, but we want to give a deadline. We want to be clear that they will go out by the end of the month.

Once people have provided the necessary information to meet Bermuda KYC standards, we will release their distributions as quickly as possible. They also will get matched with a Coinbase account or not by tomorrow, and we will have the necessary reserves to make their distributions in kind or in cash as soon as their KYC update is complete, and anyone who did not get their first interim distribution, they'll get it through -- they'll get it as soon as they complete the KYC process, as well.

So with that, unless Your Honor has any questions, I will turn to the notice of the disputed claims reserve.

THE COURT: Thank you, Mr. Aulet. I appreciate the recap. The Court wants to extent its gratitude and appreciation to all the professionals who've worked this case so far. There have been extraordinary results, although clearly parties are still suffering and including parties that are here today on motions, but the speed in which the professionals were able to turn this case around to make these distributions is notable.

And I appreciate the efforts of the employees that remain, the stakeholders that worked to support these efforts, and hopefully we can resolve pending issues expediently and ensure that these distributions occur as scheduled.

Let's move on to the motions then that are pending before the Court or the matters that are pending before the Court.

MR. AULET: Thank you, Your Honor. So, as you know, we filed the notice of the disputed claims reserve, and we had two objections, one from Mr. Gerro and one from Mr. Van Tubergen.

To be clear at the outset, Your Honor, the estate has sufficient funds after the planned customer distributions are made to -- it will have over $17 million left over. So, what in our view we are discussing is not should the first -- should

the final customer distribution be delayed, but essentially we view what Mr. Gerro and Mr. Van Tubergen are seeking is a stay pending appeal, which they have not sought and which they have not obtained.

And at bottom we view this as a simple matter. Both claims have been objected to and ruled on by this Court disallowing the -- Mr. Gerro's claim in full and disallowing Mr. Van Tubergen claim in the claimed amount of 10 million. There's about $19 which is undisputed.

Section 7(c) of the plan is clear on what happens at this point, both have appealed, but if they appeal, claims are estimated at zero dollars for all purposes. So that we do not believe that the filing of a notice of appeal gives them the right to a disputed claim reserve. They still must obtain an order of this Court, and we submit, although neither have offered a standard by which this Court should grant their request, that at a bare minimum they need to meet the standard for a stay pending appeal. Neither of them have even attempted to do so.

I would note Mr. Van Tubergen filed an untimely notice -- an untimely attempt to do so before he filed his notice of appeal, but after Your Honor denied that because he hadn't filed a notice of appeal yet, he had filed a motion for reconsideration, no subsequent motion for a stay pending appeal was filed.

And, Your Honor, in our view that solves the issue. Mr. Gerro and Mr. Van Tubergen are not entitled to a stay pending appeal unless they file for one, they meet the standard, and they obtain a stay pending appeal either from Your Honor or from (indiscernible). Neither have done so. There is no such stay pending appeal.

Turning to the details of their objection, I'll go to Mr. Gerro's first, Mr. Gerro notes in his objection that he believes a opinion from the district court was imminent, and he was right. The district court days ago denied Mr. Gerro's appeal. However, he has filed a notice of appeal to the Third Circuit as of yesterday. We believe that is exactly why no disputed claims reserve should be set.

Now that we're making a 100 percent customer and non-subordinated general creditor claim distribution, our goal is to close these estates expeditiously. It's not going to be this month. It's not going to be next month, but we're going to be driving towards the conclusion of these cases, distribute any remaining funds to subordinated creditors and close these cases, and we do not believe that an indefinite stay pending appeal should be granted without meeting the standard while Mr. Gerro pursues an appeal of the Third Circuit.

Mr. Gerro notes in his objection that -- look, I interpret his statements about litigations costs is that he will appeal any denial of a disputed claims reserve. Mr. Gerro

had three different cases in California, Gerro 1, Gerro 2, Gerro 3. There are several appeals in those cases. Mr. Gerro knows what he has to do to get a stay pending appeal and has not done it.

If he appeals this, then so be it, but we want to get this issue resolved expeditiously so that we can give -- close these cases when we're ready and don't have to deal with that issue down the road.

Mr. Gerro attempts to assert that he is being treated unfairly. As we note in our reply, that's not the case. Every customer who has -- every claimant who has had a claim disallowed by this Court, we set the reserve at the amount that is allowed. You know, we expect a -- he is being treated exactly the same way.

You know, Mr. Main and the other loan claimant who has appealed, we're holding the money that we believe that they're entitled to and that they're entitled to under your order.

We're happy to make distributions. We put it as the reserve, so that we were clear. Both of them are pro se parties. We're not seeking to zero out their claim entirely.

But to be clear, Mr. Gerro and Mr. Van Tubergen and every other creditor who has filed a claim that has been disallowed by the Court is being treated the same way in the proposed disputed claims reserve.

Similarly, and just to be clear, both of these claims do not arise out of amounts that were held on the platform at BlockFi's collapse. At bottom both Mr. Gerro and Mr. Van Tubergen had taken out loans from BlockFi, posted cryptocurrency as collateral. Prices moved against them. They didn't post enough new collateral, and their claims were liquidated well before the petition date.

So, Mr. Van Tubergen also, as Your Honor is likely aware, asserts missing theorem, that he's never demonstrated he ever deposited on the platform.

Mr. Van Tubergen also makes no effort to meet the burden to show that he meets -- he merits a stay pending appeal. Neither Mr. Gerro nor Mr. Van Tubergen wrestle with the plan, cite Section 7(c) or even suggest that they meet the standard for a stay pending appeal. They simply assert an entitlement to a disputed claim reserve, and we submit that they simply haven't met the standard here.

Mr. Van Tubergen separately raises the issue of a required showing of financial data. To be honest, we're not really sure what Mr. Van Tubergen is getting at with respect to that request. BlockFi Lending is making 100 percent customer distributions. For a disputed claims reserve, that means that we hold 100 percent of the dollar value of the disputed claims reserve.

To the extent it's a question of are there funds left

over, as we said before, there are funds left over. If, you know, Mr. Van Tubergen's claim is upheld by the district court tomorrow, that money is available, but we submit that the estate should not be required to keep that money in escrow indefinitely if no stay pending appeal has been sought or obtained.

You know, when these estates are ready to be closed, the plan administrator intends to distribute all remaining assets to subordinated creditors and seek the closure of these estates. Setting reserves when no stay pending appeal has been sought or obtained would interfere with that process, would interfere with the distribution of those assets to the subordinated creditors, and I'd note that the FTX estate and the victims of FTX's collapse are the largest subordinated creditors in this case.

Keeping these estates open indefinitely would only further diminish the estate -- the assets of this estate by needless professional burn. We submit that unless either of these claimants seeks a stay pending appeal and obtains it that no reserve should be kept for their claims.

With that I will -- unless Your Honor has any questions, I will turn it over to the objectors.

THE COURT: Thank you, Mr. Aulet. Let me hear from the objectors. Let me start with Mr. Gerro. Good morning.

MR. GERRO: Good morning, Your Honor. George Gerro

here.

Your Honor, the -- Mr. Aulet and his team over at Brown Rudnick, a very professional team. We met yesterday, and we were able to attempt to informally resolve the objection. We discussed many different possible ways of doing so, such as holding a lesser amount in reserve, holding it for a shorter amount of time, stipulating to an expedited briefing schedule, so that the account does not have to be held open for as long, perhaps depositing the funds with the Court so that the estate does not have to be held open, and we were not able to come to a resolution. I was hoping that we would be able to, but that's okay because I'm hoping that we can come to such resolution today during this hearing.

As Mr. Aulet mentioned, these are real people with their life savings that have been lost, and I would humbly submit that I'm one of those real people, and sometimes we have favorites, and I think that that's -- having a favorite or, you know -- I'm going to stick to my prepared remarks. I'm not going to get too off script here.

But I would like to recognize that a hundred percent payment on the customer claims is very good, and we're very happy about that, and that the people that don't have Coinbase accounts are not going to lose entitlement to their distribution, but somebody who has an appeal that's pending may lose entitlement to a distribution, which is -- we just ask for

similar treatment.

And at the end of the day all I've ever requested was to be treated the same as the similarly situated creditors if in the event that the claim is allowed, and I know right now the claim is not allowed, and I accept that.

I'm only asking for a reserve of approximately $6.9 million to be established, which simply represents the market value of the loan collateral that I sent to BlockFi valued as of the date of the petition filing in dollars, no interest, no penalties, no damages, simply just the value of the cryptocurrency as of the date of filing.

The notice of appeal was filed, and it is an appeal by right, and that was conceded in BlockFi's papers that there is a right to an appeal to the Third Circuit. And when the notice of appeal was filed, the jurisdiction was transferred from the district court to the Third Circuit.

BlockFi concedes that they have the money to establish a disputed claims reserve in this matter, and establishing a reserve will do the following. It will allow my claim to be treated similarly as other creditors if the claim is eventually allowed, and it will allow me to be treated similarly to disallowed claimants if the claim is disallowed, meaning that the reserve will only be paid depending on the ruling of the courts. And I am not requesting an interim distribution.

My understanding is that the clerk has the capability to accept the deposit. This Court can issue an order which would state how the funds are to be deposited and withdrawn. The funds cannot be withdrawn absent a court order, and the clerk will deposit the funds with the United States Treasury. The funds can be deposited with either the bankruptcy court clerk or the district court clerk, and there is some authority for that, Local Bankruptcy Rule 7067-1(a)(2), also Federal Rules of Civil Procedure 67.

BlockFi may stipulate to an expedited briefing schedule without conceding that an expedited briefing schedule is needed. Because these appeals have been briefed before, we can agree to a very truncated briefing schedule similar to that of actually a motion because the work has already been done, meaning that the delay is not -- does not need to be unduly the delay.

BlockFi will likely want to establish a reserve for attorney fees as well pending the Third Circuit appeal, meaning that this will not be the only reserve that will be pending.

As mentioned, the funds are going to be distributed very quickly. We received the district court's ruling last Friday. It did disrupt some Labor Day plans, but that's okay. The district court order is automatically stayed for 14 days in order to give time for the courts to provide provisional remedies. We were hoping that a provisional remedy was not

required because establishing a fund is a less coercive remedy which could be easily established. I don't think anybody disputes that this Court has the power to establish the funds.

The plan allows for the Court to issue an order. The plan says that the disallowed claims are estimated -- are deemed estimated at zero, but it does not require that the Court estimate the claims at zero. Of course something may be deemed one way and ruled another, such as a presumption.

So we could say that they are effectively presumed to be estimated at zero, but now that we have found out that the customers are going to be distributed a hundred percent of their funds, I think that that is good cause, and the fact that the estate has enough funds remaining, I think that that is good cause for the establishing of a fund.

And the bankruptcy court does have the power to establish such a reserve, and I believe that that's given by Federal Rules of Bankruptcy Procedure 8025(d)(4).

And 8025 is a relevant rule. I have a hard copy in front of me, and I hope that it has not been amended within the past 12 months. 8025, Federal Rules of Civil Procedure, Civil (a) states that the district court's judgment is stayed for 14 days after entry, which would be the minimum necessary time for a reserve to be held.

The Subsection (c) states that the bankruptcy court's order is stayed -- I'm not reading verbatim by the way.

THE COURT: That's okay.

MR. GERRO: Yes, you're grabbing your book, as well. But the bankruptcy court's order is stayed while the district court's order is stayed.

And there's one other rule that I wanted to bring to the Court's attention, and then I will answer any questions that the Court has. This Court has the power to issue an indicative ruling under Rule 8008, and I'd like to also point out that -- oh, the bankruptcy court's authority -- this is an important rule, 8007(d)(2) that provides the bankruptcy court with the following authority, quote, to issue any other appropriate orders during dependency of an appeal to protect the rights of all parties in interest.

So, even though the plan does not include these rules, the Bankruptcy Rules of -- the Rules of Bankruptcy Procedure do provide this Court with the authority to preserve the status quo pending an appeal, and if not for this claimant, I think that it would be a great showing of comity for the Third Circuit to allow them to decide the appeal before distributing the funds. Thank you, Your Honor.

THE COURT: Thank you, Mr. Gerro. Let me turn -- rather than have Mr. Aulet respond, let me turn to Mr. Magalhaes and hear him on behalf of Mr. Van Tubergen, and then we can have a global response. Good morning, Mr. Magalhaes.

MR. MAGALHAES: Good morning, Your Honor. Good

morning to everyone else that's present today virtually.

So, it's good to now understand that there will be some funds left over after this distribution. When we said in our papers that there was no financial data, I could have spelled it out more simply I guess. There's no numbers. There's no arithmetic. There's nothing for us to wrestle with to understand the relative equity in making this hundred percent distributions while you still had people pursuing their appellate rights. So, now that I know that, that's very helpful. I thank Mr. Aulet for letting me know.

Also, we did not have an opportunity to have a discussion before this hearing. I made passing mention of it in an e-mail, but hearing that Mr. Gerro had that opportunity to have a dialog, certainly I would welcome that, but I'm mindful, Judge, that the day is here, you know.

And so, you know, Mr. Aulet also mentioned burdens, and so I -- and I want to get to this like de facto stay argument because it did rankle me, Your Honor. I think you'll understand why in a moment. But, you know, as we said in our objection that was filed on August 15th, here, just on the face of things, there is no genuine effort to protect due process rights.

So, as I envision a claims reserve, you know -- obviously, Your Honor, you ruled against me, right? So for me to tell you that my appeal has merit, that's like arguing with

the king. It's not something that's easy to do, but be that as it may, I do believe the appeal has merit, and I do believe that some sort of number should have been put on the claim to reflect that, and that wasn't done. The only amount that's set aside is the amount that's not in controversy, $19 and change.

So, I just think as a just literal proposition there is no effort being made to protect Mr. Van Tubergen's appellate rights, and I'll return to that in the end.

And as I said, even if a number had been proposed, which one was not, there would have been no way for us to, you know, engage in arithmetic to say, well, really you should put $500,000 more on it because you'll still be able to make such and such distribution. Now, that we know there's 17 million left over, that's helpful.

And I'll just note the elephant in the room, Judge. I believe if you add up Mr. Gerro's claim and Mr. Van Tubergen's claim, I think we get to the balance that will be left over, the 17 million, and I imagine there'll still be some additional professional fees even after the purported final distribution is made. So, that could be an issue in terms of there being only 17 million left over.

In terms of the attack on our position as us seeking a de facto stay, we did previously seek a stay and nothing in the Bankruptcy Rules prevents us from seeking it again.

I note, Your Honor, and this was not noted in the

debtors' papers, that Bankruptcy Rule 8007(a)(2) simply says that a stay can be sought, quote, either before or after the notice of appeal is filed. Your Honor, when you initially denied my request for a stay, I did disagree with that on that ground because before I made that request in conjunction with our motion for reconsideration, I did check the rules, Your Honor, and I saw that. I thought it would still be okay to move forward.

Once I lost that battle, I'm not going to, you know, seek reconsideration of that. I just got onto the business of engaging in our appeal, doing the necessary work there. I'm pleased to say, Your Honor, that as of this past Friday, appellate briefing is concluded. We filed our reply, and it was my intention all along, my client would back me up if he were here and he were speaking to Your Honor, of reinvigorating that request for a stay once we had appellate briefing concluded.

And I would have probably even done that before this hearing, Your Honor, but that will probably come off as like an off putting tactic. You know, meaning they point something out in their papers, and then I react to it by filing a motion for a stay. So I didn't do that, but I will say that I do intend to pursue that again if necessary.

So, and also with regard to the notion that, you know, we're improperly seeking a de facto stay, I would kind of

turn on its head and say that, you know, we're entitled as a de jure matter to seek the protections that the plan envisions in terms of, you know, being fair and reasonable about the business of establishing a disputed claims reserve.

And so, okay, perhaps there's some element of this that bears upon what we would seek through requesting a stay, but also we're also just trying to play within the framework the Court established through the plan, and for reasons noted in our objection, we don't believe that the debtor is making a genuine effort to protect Mr. Van Tubergen's appellate rights.

And on that note, I'll just conclude for now, Your Honor, by saying that -- I mean, I said the other side of the coin in terms of the jury, what's going on. I think there's also another side of the coin in terms of the speed at which the debtors are seeking.

I would, you know, say, Your Honor, that we may be in the last days of the equitable mootness doctrine, and as I read the sum total of the papers presented -- and, in fact, you know, Mr. Aulet said a lot of wonderful things, and I applaud him for the work he's done for his side on this case, but the way we would see it is that the debtors are, you know, seeking the last bullet train out of Dodge to the detriment of folks like Mr. Van Tubergen and also Mr. Gerro.

I see no reason why we can't pump the brakes for a moment, and, you know, whether through, you know, establishing

a claims reserve or granting a stay or otherwise. It appears that my client is one of the -- you know, one of the proverbial last men standing.

And so we would request either a reasonable claims reserve. We'll request, you know, an audience, if we have to file that request -- refile the request for a stay, but just in general we don't see the urgent need to expedite the conclusion and closure of these cases.

THE COURT: All right. Thank you, Mr. Magalhaes. Mr. Aulet, any brief response?

MR. AULET: Sure, Your Honor. I'll just make a few points. First, Mr. Gerro cites a number of Bankruptcy Rules, but he doesn't cite a (indiscernible).

This Court has the power to grant the stay pending appeal, but he needs to seek one, and he needs to meet the standard. He hasn't attempted to do so, and the Court should not simply grant one without meeting the standard.

Similarly to respond to Mr. Van Tubergen, you know, I think he made two main points. First, that the debtors are not attempting to protect his client's appellate rights or, you know, seek -- or propose an amount lesser than $10 million, and second, that we're not following sort of the spirit of the plan.

As for the spirit of the plan, the plan is very clear. His claim is disallowed. It's estimated at zero while

his appeal is pending. That's what the plan says. There's not really any ambiguity on that point.

Second, it's not our burden to protect his appellate rights, and it's important to have his request for a stay pending appeal because it's his burden. He has to show the likelihood of a meritorious appeal.

Mr. Gerro's appeal was just denied, and his appeal is not on all fours with Mr. Van Tubergen's, but is pretty similar.

You know, he shows -- he does not wrestle with the harm to the estate. The Bankruptcy Code created estimation for a reason. It's to avoid undue delay in the administration of the estate.

We are absolutely seeking the last train out of Dodge. It is our job to quickly and fairly administer this estate because administering this estate costs money that should go to the creditors, and those creditors are no less creditors because they're subordinated, instead of the customers.

So Mr. -- both of them have had due process. They have the right to file for a standing pending appeal, but they have not, and it's not a minor technical matter because they have to meet the burden. It's not on us to say, all right, you know, you got a 15 percent chance, 25 percent chance. The plan says it's zero unless they move for a stay -- unless they get

-- move for an order of the Court. We submit that there's no basis to make that standard anything less than a stay pending appeal.

And because there is sufficient money, this is not a case where if Your Honor tells them you got to go get a staying pending appeal and meet the standard, we're sending the money out tomorrow.

I do want to just clarify one point from Mr. Magalhaes. We have $17 million left over, not exactly 17 million. We're not exactly sure how much we're going to have for subordinated claims at the end of the day, but it is at least 17 million, exclusive of the anticipated costs of getting to the point of closing the estate. So, it is not the case that we've got exactly 17 million now, but the next dollar we spend drops it to 16.99.

So, at the end of the day, Your Honor, the way our appellate system works is you do not get a free stay pending appeal. It is not our job to advocate why they're not entitled to one. They have to meet a high burden to show an entitlement to a stay pending appeal, and then it is our -- then we have the opportunity, knowing what their arguments are, to respond to that and argue why a stay pending appeal is not warranted. So, Your Honor, I'd ask that the Court disallow the objections.

THE COURT: All right. Thank you. Thank you, all. There's been much talk this morning regarding stays pending

appeal. Curious because I don't have a motion in front of me seeking a stay pending appeal. I understand the wind-down debtors argue that the relief sought by the objectors are the equivalent. When I have a stay pending appeal, and I recognize, Mr. Magalhaes, that there was one filed, and you're correct, Rule eight thousand and -- I believe 8007, maybe it's 8002, does it indicate that it can be filed before or after a notice of appeal.

But, in any event, the Third Circuit made it clear in the Revel decision that came out in 2015 that there are four factors for a stay pending appeal, and when I have one, I will apply those factors, but those factors reflect a hurdle I believe that would have to be overcome by these two objectors. One, of course, and most important, is the likelihood of success on the merits. With an appeal that's already been denied, in Mr. Gerro's case, and with the motion for reconsideration having been denied, that's a hurdle.

The other hurdle of course is you have to establish irreparable harm. And then you get to the balance of the equities and the public interest. But, the Revel -- in Revel, the Third Circuit made it clear that you can stop after the first two. And irreparable harm is rarely ever found when the harm is simply economic injury. And that's what we're addressing today. So, those are hurdles. I offer that just in the event motions are filed that the parties direct their

attention to addressing those issues.

With respect to the issues today, the Court after reading the submissions, undertook some further review and research and came across the decision of In re: Enron in 2006, Judge Gonzalez at the time. And I'll give you a cite for it. It's a Westlaw cite, 2006, Westlaw, 544463 -- 544463. And I bring this case to your attention because it is almost on all fours with the issues and the facts that are presented before the Court today.

In Enron, there was a motion to estimate a previously disallowed claim at zero for distribution purposes, notwithstanding a pending appeal, and in the absence of any stays pending appeal. Specifically, in the Enron decision -- Enron case, the plan had provided that the reserve for a disputed claim that was previously disallowed would be zero, even during the pendency of an appeal. It did provide however that the Court in its sole and absolute discretion could establish a reserve for a disputed claim if necessary to protect the rights of such holder. The Court noted that this authority to fix a reserve was within its discretion and was not intended as a substitute for a stay pending appeal.

Now, in Enron the reorganized debtor argued that maintaining such a reserve would not -- would work at hardship on the general unsecured creditors who are anticipating a distribution, and that estimating at zero would comply with the

dictates of the plan. The claimants on the other hand, among their arguments, contended that the failure to maintain a reserve would undermine their Appellate rights.

The Court looked to Section 1142, which authorizes a Court to direct appropriate parties to take all steps necessary to perform any act necessary for a consummation of a plan. And the Court overruled the objection, noting that it had already reviewed the substance of the claims when it disallowed the claim originally. And nothing had been presented to compel reconsideration. The Court also looked to balancing the equities, and determined that the harms caused by a potential deferral of a fair distribution would disrupt plan administration and outweigh the potential harm to claimants who can still seek reconsideration after a successful appeal under 502(j).

So, let's turn to this case. We have similar provisions in a plan. Section 7(c), Roman Numeral VII(c) of the plan, provides that notwithstanding any provision otherwise in the plan, a disputed claim that has been expunged from the claims register, but that either is subject to appeal or has not been the subject of a final order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Court. So, it does give the Court some flexibility. In the event the bankruptcy court estimates any contingent or unliquidated claim, that estimated amount shall constitute a

maximum limitation on such claim for all purposes under the plan, including for purposes of distribution.

So, what we have is somewhat similar language in a situation where the plan dictates that the claims that have been disallowed be estimated at zero for distribution purposes. There have been no appeals of the plan or those provisions of the plan by any of the objectors. There's been no, at this point, stays pending appeal entered by this Court or the district court. We have the district court already weighing in on Mr. Gerro's appeal. And this Court having already denied reconsideration with respect to Mr. Van Tubergen's claims.

This Court therefore has no basis to believe that either claimant will succeed on appeal, notwithstanding each claimant maintains the right to pursue further appeals, and the Court recognizes that. And the Court recognized that each of these claimants have the ability to seek reconsideration under 502(j) if they are successful in their appeals.

More so, the Court recognizes that each of these claimants can seek to compel the wind-down debtor to claw back distributions necessary to pay any pro rata amount on allowed claims, if they would be successful on appeal, and if the wind-down debtor does not have sufficient funds remaining to satisfy the pro rata amount. With these protections, this Court is compelled to deny the objections, noting that the Court has an obligation to support, pursuant to Section 1142, and authorize

the wind-down debtor to take the steps that are consistent with the plan.

The plan provides for estimation at zero for distribution purposes of disallowed claims. There are avenues of recourse for the objectors. I am pleased to hear that Mr. Aulet has confirmed that there are, at this point, anticipated to be sufficient funds to satisfy the claims in the event they are upheld on appeal.

I will require one additional protective provision to be included in the order overruling the objection. To the extent the wind-down debtors are in a position to make distributions, which will create an inability to satisfy the claims as sought under the appeal, they are to notify the objectors and provide the objectors with seven days notice to request a hearing before the Court.

In other words, if we get to a point where the wind-down debtor is closing these cases and will make distributions, which will leave them without sufficient funds to make the pro rata distribution owed on the claims where they allowed on appeal, the objectors may come back before the Court for the Court to consider either requiring a reserve at that point or other steps. And the other steps may just be the need to claw back funds. Although the Court's not ruling on that.

But, at this juncture, I'd like to see the distributions made and I'd like to see the appeals pursued.

And we may have resolution of the appeals before we need to address where the wind-down debtor will come up with the funding. Mr. Gerro's, I see your hand raised.

MR. GERRO: Thank you, Your Honor. I want to be heard regarding your additional order that -- and may I interpret that order as ordering the debtors to establish a reserve unless and until they provide seven days notice and there's an opportunity to be heard on that matter?

THE COURT: No. It's simply a notice provision. I'm not requiring the establishment of a reserve. I simply want, when the time comes, because the Court is in the dark as far as the administration by the wind-down debtor, if there comes a point in time, and I take Mr. Aulet at his word that there are funds now that would satisfy the amounts that would be due if there was success on the appeal, I don't know how long that will be.

But, if after distributions or when distributions are finally made and there's no other funds to collect, it appears that there will not be any further additional funds available to pay, he is to provide that notice before making the distribution. I mean, you can look at it different ways, but I'm not requiring the fixing of the reserve.

MR. GERRO: And may I ask, what would be the remedy or enforcement mechanism, if the notice is untimely provided or distributions are made notwithstanding this order of the Court?

THE COURT: Any -- the remedies are always consistent with enforcement of court orders. You can seek a contempt order, or you could seek other relief that would be appropriate. Mr. Aulet, do you have any questions or do I need to clarify anything for your benefit?

MR. AULET: No, Your Honor. I think that's clear. I think -- look, our expectation is that a distribution of subordinated creditors would be contemporaneous with the closure of the estate. So, I would expect, frankly, that they'll get more than seven days notice as a practical matter.

MR. GERRO: I just wanted to confirm. Is it seven calendar days or seven business days? I'd assume calendar, but --

THE COURT: Calendar days. I think the federal rules anticipate calendar days these days. Any other issues? Mr. Aulet, I'll have you submit a form of order and notice the objectors?

MR. AULET: Of course. We will submit a form of order and go from there.

THE COURT: All right. Thank you. We can move on to -- thank you, gentlemen. We can move on to --

UNIDENTIFIED ATTORNEY: Thank you, Your Honor. Have a good day.

THE COURT: Thank you.

MR. AULET: So, I will be turning it over to my

colleague, Matthew Sawyer, for the KYC/AML motions.

THE COURT: All right. Thank you. Good morning, Mr. Sawyer.

MR. SAWYER: Good morning, Your Honor. Before I get into the substance, can you hear me okay?

THE COURT: Yes, I can. Thank you.

MR. SAWYER: Excellent. For the record, Matthew Sawyer, of Brown Rudnick, on behalf of the plan administrator. As Your Honor is aware, we are before you today on what we sort of have colloquially referred to as the KYC/AML motion. I will also note that there is a motion pending before Your Honor to seal the associated schedule with that motion, which provides customer information, including account information, names, addresses, and the like.

I will also note that we have on the line as it will, Ms. Flori Marquez, BlockFi's COO, who submitted a declaration with the motion, and is available for cross if necessary. Otherwise, we would request that her declaration be submitted into evidence.

THE COURT: All right. Well, let me hear from counsel. Let me have an appearance on behalf of Mr. Gordon.

MR. WEISSBERG: Good morning, Your Honor. My name is Aaron Weissberg. I'm an attorney from Dorf Nelson & Zauderer, and we represent Matthew Gordon.

THE COURT: Thank you. Do you have any objection to

Ms. Marquez's declaration coming into evidence?

MR. WEISSBERG: Yes, I do object to the -- I don't think that the affidavit is sufficient. I don't think they've submitted any competent, admissible evidence to this Court to support their motion. There's no underlying records that were submitted to this Court attached to her affidavit that would demonstrate the validity of their claim of entitlement to restrain any accounts.

THE COURT: All right. The objection goes, in this Court's view, more to the weight of the affidavit or the declaration. I'm going to overrule the objection. Mr. Weissberg, do you wish to cross examine Ms. Marquez?

MR. WEISSBERG: Yes, sure.

THE COURT: You're not required to. But, if you wish to, I want to give you the opportunity.

MR. WEISSBERG: Yeah, I know. I appreciate it, Your Honor.

MR. SAWYER: Your Honor, if I might interject for just a moment? While we're happy to go forward with cross-examination of Ms. Marquez, we would just ask that it be limited to the information contained in her declaration. To the extent that Mr. Gordon and his counsel request something more of an evidentiary hearing on his objection and cross motion, we would request that that be heard and dealt with at a later date. Just simply not appropriate, given the turnaround

time of the cross motion and the like for this hearing.

THE COURT: Let me ask a question before we proceed further. I need clarity. How much is the wind-down debtor holding of Mr. Gordon's funds, and seeking to hold pending notification of various parties under its proposed protocols?

MR. SAWYER: Sure, Your Honor. So, as of now, and as we hopefully made clear in our response to the objection, Mr. Gordon's claim is, I believe, in the $800,000 range of which BlockFi is holding the entirety. But, is only seeking to withhold the amount that it believes is potentially violative of the Unlawful Gambling Act, which is approximately $5,000. So, we would view the dispute as over approximately $5,000.

THE COURT: We're going on an evidentiary hearing to spend more time and professional fees on all sides over $5,000? This doesn't make sense. Mr. Weissberg, by the time we -- I have rescheduled an evidentiary hearing. The notice could have gone out under the protocols, and we probably could of -- your client would have this other $800,000. You might even have the opportunity just to collect the five thousand. It seems that we're spinning wheels over a de minimis amount.

MR. WEISSBERG: Your Honor, if I may --

THE COURT: Yes.

MR. WEISSBERG: -- address the Court? Okay. Part of the problem is that BlockFi has no legal authority to make this application to this Court. And this Court doesn't have

jurisdiction to grant it. They're seeking to restrain funds under the Bank Secrecy Act and under the -- with respect to Mr. Gordon, the Unlawful Gambling Act. But, those statutes do not authorize a financial institution to restrain or freeze a consumer's account. And so, their application to you is improper.

And when you read the statutes that they cite, there's provisions for the U.S. Secretary of the Treasury or the U.S. Attorney General, to bring a forfeiture action in federal district court, which has exclusive and original jurisdiction. It's cited in the statute. That's the due process that's provided by Congress under the statute.

And there's a case that I cited, U.S. v. $1,399,313.74, which is 594 F. Supp. 2d 365. It's a Southern District of New York case, 2008. And it talks about the fact that the attorney -- the Secretary of the Treasury can -- can bring a proceeding. Under the Bank Secrecy Act it talks about the fact that it -- that deals with transactions more than ten thousand or structured transactions where they can file a SAR, which is a suspicious activity report. But, it does not authorize BlockFi, who does not have standing, to restrain or freeze consumer's accounts.

So, that application, once they file a SAR, is incumbent upon the government to bring a forfeiture action and seek a TRO, which is in the statute itself. And so, here

they're making an application to the Court under a statute that they cite that does not authorize the relief that they're seeking. And they've restrained his funds, almost a million dollars, right, for two and a half years, but they didn't have the authority to restrain. Frankly, it's a conversion.

THE COURT: Well, wait a minute. Wait a minute, counsel. This has been part of a Chapter 11. They've restrained his funds as part of a Chapter 11 process.

MR. WEISSBERG: Prior to the Chapter 11, Your Honor.

THE COURT: Well then, let's be clear.

MR. WEISSBERG: They restrained his account prior. And then when they were forced into bankruptcy by the government, then the automatic stay went into effect. But, the fact is, under the plan that was approved by this Court, voted on and approved and Your Honor issued a confirmation order, directed that approved claims be paid on the distribution date. And it says shall be paid on the distribution date. The distribution date, the initial one, was eight months ago. But, they haven't paid his claim. And they admit that the Unlawful Gambling Act, they would only seek to restrain the less than five thousand. But, what have they done? They've restrained nearly a million dollars of his money, admittedly, unrelated to that.

And when you look at the Unlawful Gambling statute, under Regulation GG of the statute, it specifically talks about

restricting -- first of all, he never gambled. This is an allegation that there were seven or eight prior Wallet accounts not connected to him. There's no admissible evidence that he owned those prior Wallets. And the statute, what it regulates, it talks about blocking an account, Regulation GG. And when they say blocking, they explain what they mean. That if a gambling website has a bank account and they're trying to take a credit from a consumer for a gambling debt, they're supposed to block, meaning reverse the transaction, credit the money back to the consumer, and then this regulation goes on to say, and you're not supposed to freeze or restrain the consumer's account. In this case, the consumer is Matthew Gordon.

THE COURT: Well, let's -- let me -- before we get into evidentiary issues, I want to hear the legal -- I want to hear the argument as a matter of law. Number 1) the Court is confident of its jurisdiction to -- as a core matter to compel compliance with and clarify and interpret the terms of a plan that it confirmed. I'm not as sanguine with your argument as to jurisdiction. I'm not ruling on whether or not there are funds underlying the underlying issue or transactions are lawful or not. I'm simply ruling upon whether or not the debtor is complying with the terms of the plan, and whether the debtor is seeking authority to do so.

But, let me hear from debtors' counsel, the wind-down debtors' counsel, with respect to the legal arguments that have

been raised as to the capacity of the wind-down debtor to be able to --

MR. WEISSBERG: Your Honor, could I -- I apologize, Your Honor.

THE COURT: I'll let you go -- Mr. Weissberg, I'll let you respond. Let me hear from the wind-down debtors' counsel.

MR. SAWYER: Sure. Thank you, Your Honor. If I might, let me just take a step back and frame for the Court (indiscernible) in interest the situation and sort of thoughts underlying the motion as it was filed and put together. BlockFi pre-petition was subject to a number of federal regulatory constructs that require it to -- to identify and take certain actions with respects to funds that it believed were related to money laundering or identity theft issues.

BlockFi utilized several software applications and other processes to go through that process. Where issues were raised, BlockFi's compliance team would review the issues and make a risk-based, which is to say not a fail proof or perfect assessment, but a judgment call, as to the severity of the issues that were raised. And from there take, you know, any of a number of different courses of action, including freezing accounts.

When BlockFi filed, we believe that BlockFi's obligations remained under the applicable regulatory schemes.

And so we now find ourselves with a number of accounts that have been flagged for KYC or AML issues. We have certain information in BlockFi's records that suggest the nature or basis for the flag, and we have, you know, a compliance team that is significantly smaller today than it was prior to the petition date.

So, with that being the set of circumstances that the plan administrator is operating under, we put forth the protocols that were identified in the motion for this Court's consideration to deal with what we think is a bit of a thorny circumstance. The protocols seek to provide a number of protections, including notice, what we believe is sufficient due process, and is otherwise, we believe, in compliance with the plan.

And on that note, I would just add that the plan does not set forth required distribution dates or the like. So, to the extent that Mr. Gordon is arguing that he had to receive some subset of his funds by a certain date, we don't agree with that assertion. I'll pause there to see if the Court has any questions.

THE COURT: No. I'll turn back to Mr. Weissberg, if he wants to respond.

MR. WEISSBERG: Yes, Your Honor. Thank you. As to the non -- as -- I know Your Honor respectfully talked about core proceedings. But, this concerns potential claims of the

U.S. government against non-debtor creditors, which is non-core by definition. And the Court cannot enter a final judgment in non-core matters without the party's consent. And Matthew Gordon does not consent.

So, as far as the jurisdiction of the Court, I also refer to the statute and the due process that's defined by the statute, which gives exclusive jurisdiction to the federal government, original and exclusive. And also, BlockFi lacks standing because to seek a restraint under the statute requires the U.S. Secretary of the Treasury or the Attorney General to bring a forfeiture proceeding and seek a TRO to restrain the funds. But, nowhere in the statute that they cited is their authority for a bank or a financial institution to restrain funds in an account. And so on that basis, I believe, that the Court would not have jurisdiction to entertain the application. But, also fundamental principals of due process are turned on its head. And I say that because they want to send out freeze notices and the onus and the burden is on the creditor to prove that they've not committed a crime.

And if you take a look at the case that I cited, which was U.S. v. $1,399,313, that I cited before, that talks about the burden of proof being on the Attorney General and the U.S. government to prove that a crime has been committed by a preponderance of the evidence. And that it relates directly to the funds, directly traceable to the funds in the account, and

they have a one-year statute of limitations from the date of the transaction.

In Matthew Gordon's case, the transaction is two and a half years ago. And the federal government will be time barred from even seeking an application, even if they were standing before you today, which they're not. And so, there's no basis to restrain Matthew Gordon's funds under the Gambling Act, no jurisdiction or basis. And -- and I would argue also the jurisdictional -- even the statute of limitations was also -- creates a lack of jurisdiction.

But, I think that there's no evidence, competent, admissible evidence with underlying business records or -- that would show or demonstrate any transaction between Matthew Gordon and a gambling website. In fact, their opposition admits that they have incomplete transaction history relating to Mr. Gordon. So, they cannot trace or demonstrate that he had any involvement with a website that involved gambling. So, it's just pure conjecture.

And in fact, their Footnote 6 in their papers say that they take no position whether Matthew Gordon had violated the law, the Unlawful Gambling Act. So, there is no basis and no evidentiary proof to warrant restraining his funds. And under the plan, as per the distribution date, at least there was an initial distribute date in January, those funds should have been distributed.

But, I don't think the burden should be shifted to Matthew Gordon to prove his innocence, which is what they're asking the Court to do. That has to violate due process under the Fifth and Fourteen Amendment of the Constitution. It violates the statute that they cite, which puts the onus on the Attorney General to bring proceedings, and only they have authority and standing to restrain funds. And so I think the application is improper and should be denied. I don't think that there's any jurisdiction.

THE COURT: All right. Thank you. Mr. Sawyer, wish to respond?

MR. SAWYER: Sure. Thank you, Your Honor. The -- with respect to the Unlawful Gambling Act, which is at issue here, the act prohibits the knowing acceptance of funds tied to illegal gambling. BlockFi has in its records, while not complete, evidence -- and this is where we get into an evidentiary hearing, which I'm hoping to sort of put off until the time is necessary. But, BlockFi has evidence to suggest that $5,000 that were deposited into Mr. Gordon's account relates to unlawful gambling activity that would be subject to the Unlawful Gambling Act.

Because it is a violation of the act to knowingly accept funds that were related to unlawful gambling, the wind-down debtors' position, and it may be a conservative position, but the wind-down debtors' position is that distributions of

those funds and Mr. Gordon's knowing acceptance, would be a violation under the statute, and that therefore our facilitation of that would be similarly violative. So, that's the statutory construct as the wind-down debtors see it. I'm not sure if that is helpful or answers Your Honor's question.

THE COURT: So, under the protocols, what do you anticipate the wind-down debtor -- what are the next steps --

MR. SAWYER: Sure.

THE COURT: -- with respect to Mr. Gordon's funds?

MR. SAWYER: Sure. So, the -- part of Mr. Gordon's funds that are not subject to the motion, again the vast majority of Mr. Gordon's funds, would be distributed upon -- in a similar fashion to other allowed claims not subject to KYC or AML issues.

With respect to the $5,000 at issue here, we would issue to Mr. Gordon a freeze notice. The freeze notice would indicate that Mr. Gordon's $5,000 were flagged for a potential KYC or AML issue. It would attach with it the protocols. Mr. Gordon would have six months following receipt and service of the freeze notice to move this Court for alternative relief. That is the procedure as outlined in the -- in the motion.

THE COURT: All right. Mr. Weissberg?

MR. WEISSBERG: Yes. Thank you, Your Honor. I just would like to cite Paragraph 8 of the debtors' opposition papers that says, if this Court approves the motion, the wind-

down debtors would issue the freeze notice concerning the portion of the objectors' account believed linked to (indiscernible). And it goes on to say, the objector would have an opportunity to introduce evidence that the wind-down debtors are incorrect in their accounting of the source of funds or argue for alternative interpretations. So, they basically want to be able to issue a freeze notice, and he's presumed guilty, and now has to prove he hasn't committed a crime. This is the opposite of due process. It cannot be the process.

And there's a statute that deals with it. They're asking you to reinvent the due process procedure, but there's a statute that specifically talks about it under the Unlawful Gambling Act that refers to -- under the civil remedies that you can seek to restrain it, but it's got to be the U.S. Attorney General. And it's got to be in a plenary action in federal district court that has exclusive jurisdiction. And so, trying to preserve claims of the United States government against a creditor is non-core and I don't think that there's a basis for it.

We asked if they would issue a check for the money, but they didn't commit to that. They don't intend to restrain the rest of the funds, but that's, you know, I don't have a stipulation and I don't have a check. And so -- but, I do have -- the debtor is trying to implement what I perceive to be an

unconstitutional -- an application for an unconstitutional process to flip the burden on my client. And if we're going to have an evidentiary hearing, the onus would be on BlockFi to present admissible, competent, admissible evidence that he has interacted with a gambling website.

And when you read their papers, they talk about the fact that -- this transaction was not from his Wallet account. This was prior -- seven or eight Wallet accounts before it got to his Wallet. And so, they're looking at the cryptocurrency down the chain. If somebody in Germany or the UK gambled on the website and then they sold their crypto on BlockFi's platform, and then you or me or someone else comes and buys the cryptocurrency on BlockFi's platform, we haven't committed a crime. We haven't gambled.

The mere fact that you can trace in the crypto the prior Wallets that owned it from previous owners and what they might have done or not done, that doesn't mean he's committed a crime. And there's no basis to restrain it. I mean, even if there was an alleged -- when you look at the statute, it talks about they can -- they're supposed to credit the money back from the gambling website to the consumer, and they're not supposed to freeze or restrain a consumer's account.

In this case, they're not supposed to restrain his money at all under the statute. So, to ask this Court to restrain his money, under the statute which is time barred

under the one-year statute of limitations, makes no sense. And I'm just speaking with respect to Mr. Gordon. I see no reason to restrain his money, which is already restrained, Your Honor. They're just asking the Court to continue the restrain, because they've already restrained and withheld it and froze it by not distributing it. And so, I don't think there's a legal basis to do that, and I think our cross motion should be granted.

I don't think that there's anything in Ms. Flori Marquez's affidavit that speaks to Matthew Gordon at all. His name's not even mentioned. And there's no evidence; she attaches her affidavit to demonstrate he's committed a crime. Whatever Mr. Sawyer says is from a lawyer's inadmissible hearsay. There's no evidence that ties a direct connection between the gambling -- some gambling website and Matthew Gordon. It's -- there's just nothing there.

So, I don't see a basis with respect to Mr. Gordon to restrain his funds further. And I would ask the Court to allow the distribution of his approved claims. They should not be part of an opportunity to flip due process on its head and make him now have to prove he hasn't committed some crime. First of all, the one with the records is BlockFi, and now they admit to you they don't even have the records. They have an incomplete transaction history.

THE COURT: All right. Thank you, Mr. Weissberg. Mr. Aulet?

MR. AULET: Yeah. I just wanted to clarify one point. Look, we are happy to bear the burden on demonstrating, you know, why BlockFi thinks that it needs to withhold those funds. What we're trying to do here, and I think Mr. Weissberg is not being particularly clear on this point, we're trying to avoid committing a crime. We're not keeping Mr. Gordon's funds. We need to make sure that the plan administrator, when he sends out distributions of estate assets Mr. Gordon does not have. These are not Mr. Gordon's funds, they're estate assets, and want to distribute them. We do not interpret Your Honor's order to tell us to do something that we are concerned as mia culpa.

For the KYC/AML motion, we're trying to make sure that we -- we've noticed every government agency, so that they could show up and object, and we're pleased that they haven't. Mr. Gordon, look, I think if he wants to have a hearing on his four or five thousand dollars, we're happy to do so, and that that should be at an appropriate time. But, I just want to be clear on this point. We're trying to avoid a plan administrator or BlockFi committing a crime. Nobody is going to be pocketing the money.

And Mr. Weissberg keeps mixing up the Bank Secrecy Act and the Unlawful Internet Gambling Act. The Unlawful Internet Gambling Act says, we can't return, we cannot process the transaction. If his client denies being the source of the

funds, we have to return it to there, arguably under the law. It's not actually super clear how we deal with that in this situation, and it may be that there are more of those than just his client when we dig into it.

But, Your Honor, I think that Mr. Sawyer should be allowed to argue the point for the global procedures, and if there's anything wrong with the global procedures. And for Mr. Gordon, specifically, if he wants to takes discovery, we'll provide the documents underlying why we're concerned about his claim. We will have to redact those, because one of the points under the Bank Secrecy Act and one of the problems with this whole issue is, it's illegal for us to tell him, if a SAR was filed, or anybody else. So, if anything related to these documents mentions a SAR, we are committing a crime if we give it to them.

It's -- this is a huge issue just because of that point. But, we're happy to have that. It just shouldn't be today, because if he wants to have an evidentiary hearing on $5,000, it's his due process rights. But, we'll have that hearing, but we want to get everybody else's money out. And frankly, we want to get the rest of his money out. We just don't want to commit a crime doing it.

THE COURT: All right. Thank you, all. Let me start with, this is not -- contrary -- in my view, respectfully Mr. Weissberg, it's not an issue of jurisdiction. Core or non-core

is not a jurisdiction issue. It's the authority of the Court. And this -- the District of New Jersey, as in virtually every other of the 93 districts, have adopt rules that, to the extent the Court makes a finding that it's a core matter and it turns out to be non-core, the Court's ruling can be accepted as a proposed finding of fact and conclusion of law for the benefit of the district court.

But notwithstanding, the Court maintains jurisdiction, especially over implementation and clarification, interpretation of the plan. This plan confirmed in the BlockFi case requires the wind-down debtor and the reorg -- requires the wind-down debtor to comply with all federal and state laws. And the question before this Court is whether the proposed protocols are reasonable steps necessary for the administrator to comply with the plan and comply with the federal and state laws. And this Court does believe it is reasonable.

The Court is not making a ruling on the merits of the underlying transaction and whether Mr. Gordon properly or improperly transferred funds to BlockFi. The Court is going to direct BlockFi in partial granting of the cross motion to remit and distribute to Mr. Gordon all of the funds that are -- that are being held by BlockFi on his allowed claims, with the exception of the flagged amount. Those funds are to be distributed, along with all other distributions, at the next point in time where the wind-down debtor makes distributions,

consistent with all other creditors.

With respect to the funds that have been flagged, the Court adopts, approves, and authorizes the wind-down debtor to pursue these protocols, give the notice. At that hearing, clearly the burden, it's a shifting burden, the burden is going to be on BlockFi to continue any restraints. Mr. Gordon can simply file the appropriate request with this Court by motion, a relatively straightforward motion, pretty much including everything that's been argued today, Mr. Weissberg, as to why the funds should be released.

But, at least the process will protect the wind-down debtors' administrator from -- from any accusation that they have not complied with the law, has given proper notice to the pertinent authorities who in all likelihood given the amount and given the issues, will sit on our hands and nothing will come of this, other than a delay with respect to the $5,000. I would urge the parties to try to avoid a further evidentiary hearing on the underlying transactions, because I think that's just going to cost more than the amount at issue.

But, I want to be clear that there is no reason to treat Mr. Gordon differently, but he's not to be treated in a priority position. He is to receive his distribution when the other distributions are being made, absent the flagged amount. And then the parties can pursue an evidentiary hearing at a later date on the merits of further restraints with respect to

the $5,000, and I give that as an approximate amount.

Mr. Sawyer, will you submit a form of order on notice to Mr. Weissberg? And the Court is always available for a conference call if we can meet to address any matters to avoid further time and expense on both sides.

MR. SAWYER: We will do so. Thank you, Your Honor.

UNIDENTIFIED ATTORNEY: Your Honor --

THE COURT: Thank you. Thank you, counsel. I think -- thank you, Ms. Marquez. I think we're -- for the record, the declaration remains in over the objection. But, of course, Mr. Weissberg reserves his right to pursue discovery and further examination at a later point in time if it becomes necessary. Thank you.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

THE COURT: Thank you.

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C E R T I F I C A T I O N

We, COLETTE MEHESKI and KIM WEBER, court-approved transcribers, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Colette Meheski
COLETTE MEHESKI

/s/ Kim Weber
KIM WEBER

J&J COURT TRANSCRIBERS, INC. DATE: September 6, 2024